



DELTA STEWARDSHIP COUNCIL

A California State Agency

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(916) 445-5511

August 10, 2012

Michael Brown
Secretary
Brown Sand, Inc.
P.O. Box 1429
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Phil Isenberg

Members
Randy Fiorini
Gloria Gray
Patrick Johnston
Hank Nordhoff
Don Nottoli

Executive Officer
P. Joseph Grindstaff

Dear Mr. Brown:

Thank you for your recent letter dated July 27, 2012 inquiring about the status of Brown Sand's Mossdale Quarry and Stewart Tract in San Joaquin County as covered actions under the Delta Plan. In response to your inquiry, we would welcome the opportunity to meet with you and San Joaquin County staff at your earliest convenience to discuss this matter.

The process for certifying a covered action's consistency with the Delta Plan is prescribed in the Delta Reform Act, including Water Code Section 85057.5 and 85225.

A key feature of the Act's consistency certification process is that the determination of whether a proposed project is a covered action (which necessitates the filing of a certification of consistency) is made by the state or local agency that approves, funds, or carries out the project, rather than the Delta Stewardship Council. The Council's role, as provided in Water Code Section 85225.5, is to assist state and local agencies in preparing a certification through early consultation on a proposed covered action.

With these provisions in mind, a meeting with you and county staff would be a welcome opportunity to discuss whether Brown Sand's Mossdale Quarry and activities on Stewart Tract are covered actions whose consistency with the Delta Plan is something San Joaquin County (or the City of Lathrop) would need to certify once the Delta Plan is adopted and its regulatory provisions become effective (anticipated in early 2013).

Based on your letter, it appears that you have already reviewed the statutory exemptions regarding covered actions contained in Water Code Section 85057.5 (b). If San Joaquin County concurs with your interpretation of the law regarding the relevance of the exemption to your operations, you may wish to request a letter of confirmation from the county and ask them to copy the Delta Stewardship Council. This is not required by law, but other project proponents have found this to be a useful assurance. Please be aware that an agency's

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

— CA Water Code §85054

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determination that a project is or is not a covered action must be reasonable, made in good faith and consistent with law, and that determination is subject to judicial review.

Water Code Section 85057.5(c), which prevents the abrogation of vested rights, may also be applicable to certain projects on Stewart Tract. We could also discuss how the draft Delta Plan's provisions regarding administrative exemptions to the covered action process could apply to Brown Sand, Inc. if the Delta Plan is approved as drafted.

We recently met with staff from the City of Lathrop to discuss developments on Stewart Tract. This was a very productive meeting and I feel we were able to answer many of their questions concerning Covered Actions under the Delta Plan.

We look forward to meeting with you and San Joaquin County staff. Council staff will contact you to schedule a meeting within the next week. If you have any questions or need additional information prior to our meeting, please contact me at (916) 445-0258 or cindy.messer@deltacouncil.ca.gov.

Sincerely,



Cindy Messer
Acting Deputy Director, Delta Plan

cc: Phil Isenberg, Chair, DSC
DSC Council Members
P. Joseph Grindstaff, Executive Director, DSC
Dan Ray, Chief Deputy Executive Officer, DSC
Glenn Gebhardt, Director Community Development/City Engineer, City of Lathrop
Stephen Salvatore, Interim City Manager, City of Lathrop